

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 7th day of November, 2013, the following order was made and entered:

IN RE: Establishment of Unified Electronic Filing System —
Request for Comments on Proposed Amendments to the West Virginia Trial Court Rules, Rules of Civil Procedure, Rules of Criminal Procedure

On a former day, October 29, 2013, came Matt Arrowood, Director of Circuit Clerk Services, and presented proposed amendments to the West Virginia Trial Court Rules, West Virginia Rules of Civil Procedure, and Rules of Criminal Procedure, all to establish the Unified Electronic Filing System.

Upon consideration of the proposed amendments the Court does hereby provisionally approve said amendments, as well as a period of public comment on the proposed amendments, as submitted. Additions are indicated by underlining. Comments may be filed in writing with the Clerk of this Court on or before December 30, 2013.

THE WEST VIRGINIA SUPPLEMENTAL TRIAL COURT RULES FOR THE WEST VIRGINIA E-FILING PILOT PROJECT

1. INTRODUCTORY MATTERS

Rule 1.01. Definitions.

“Action” shall mean any matter, issue, or proceeding filed or pending in a Circuit Court.

“Document” shall mean any pleading, motion, notice, or other document intended to be filed in an Action.

“E-File Case” shall mean an Action meeting the requirements of Rule 1.04 in which Documents will be electronically filed and served.

“E-Filing Pilot Rules” shall mean these Rules.

“E-Filing Receipt” shall mean the electronic document generated by the E-Filing System upon proper filing of a Document electronically.

“E-Filing System” shall mean the electronic and information-technology infrastructure that supports electronic filing in the courts in West Virginia, as designated by the Supreme Court of Appeals.

“E-Filing System Provider” shall mean the entity that provides the E-Filing System and related support systems, as selected by the Supreme Court of Appeals.

“Governing Rules” shall mean the rules promulgated by the Supreme Court of Appeals that govern proceedings in the Circuit Courts and are as follows: the Rules of Civil Procedure, the Rules of Criminal Procedure, the Trial Court Rules, Rules of Juvenile Procedure, Rules of Procedure for Child Abuse and Neglect Proceedings, Rules of Practice and Procedure for Domestic Violence Civil Proceedings, Rules of Practice and Procedure for Minor Guardianship Proceedings, Rules of Procedure for Administrative Appeals, Rules Governing Post-Conviction Habeas Corpus Proceedings.

“Notice of Electronic Filing” shall mean the electronic document generated and emailed to Users in an Action when a Document is electronically filed.

“Pilot Project” shall mean the Supreme Court of Appeals’ mandate to establish an e-filing pilot program in Pilot Counties.

“Pilot Counties” shall mean counties specified by the Supreme Court of Appeals for participation in the Pilot Project.

“User” shall mean a person who is qualified by the E-Filing System Provider to participate in the E-Filing System.

“User Identity” shall mean the unique electronic credentials generated and assigned to a User by the E-Filing System Provider.

Rule 1.02 Purpose.

These E-File Pilot Rules are established to implement the Pilot Project in the Pilot Counties. These E-File Pilot Rules are intended, upon completion of the Pilot Project, to serve as the basis for permanent changes in Governing Rules applying to filing and service and are therefore matters of statewide concern. The Supreme Court of Appeals hereby adopts these E-File Pilot Rules effective _____.

Rule 1.03. Applicability

These E-File Pilot Rules shall govern those Actions selected for participation in the Pilot Program pursuant to Rule 1.04 in any Action before a Circuit Court in a Pilot County.

Rule 1.04. Selection of Cases for Participation in Pilot Program.

Within the Pilot Counties, participation of Actions in the Pilot Project shall not be mandatory. Actions before Circuit Courts within Pilot Counties shall be subject to these E-Filing Pilot Rules by:

- (a) the party initiating the Action filing the pleading which initiates the Action via the E-Filing System, unless the judge presiding over the Action later orders that the Action proceed pursuant to traditional filing and service methods in the Governing Rules; or
- (b) the judge presiding over any Action, considering the ability of the parties to comply with these E-File Pilot Rules, entering an order subjecting the Action to these E-File Pilot Rules.

Circuit Judges are encouraged to facilitate as much participation in the Pilot Project as practical in order to provide a sound basis for implementation of permanent e-filing rules and procedures.

Rule 1.05. Integration with Other Rules

These E-File Pilot Rules supplement, but do not replace or amend the Governing Rules insofar as those Governing Rules apply to Actions in Circuit Courts. The filing and service of Documents in an E-File Case in accordance with these E-File Pilot Rules shall constitute compliance with the Governing Rules. If a conflict exists between these E-Filing Pilot Rules and any other Governing Rules, the E-Filing Pilot Rules shall govern, provided, however, that Trial Court Rule 15 governing electronic service in Mass Litigation Proceedings shall continue to govern electronic filing in Mass Litigation Proceedings and that these E-Filing Pilot Rules shall have no application in Mass Litigation Proceedings.

Rule 1.05. Citation to Rules.

These E-Filing Pilot Rules may be cited as E-Filing Pilot Rule ____.

2. AUTHORIZED USERS

Rule 2.01. Becoming an Authorized User; User Identities; Payment of Fees.

Each attorney or party wishing to participate in the Pilot Project must register with and complete all training and authorization actions required by the E-Filing System Provider. Upon completion of the authorization process, User shall be issued a unique User Identity with which the attorney or party shall file, serve, and receive Documents electronically. A User must pay all fees required by the E-Filing System Provider. Denial of access to the E-Filing Service due to non-payment of fees shall not excuse non-compliance with these E-Filing Pilot Rules or the Governing Rules.

Rule 2.02. User Responsibility to Maintain Up-to-Date Information.

It is the responsibility of each User to maintain up-to-date contact information with the E-Filing System Provider, including specifically a valid and working e-mail address that has not exceeded its size limitations in order to receive Documents served electronically. The Supreme Court of Appeals, or any administrative part thereof, the Circuit Court, the Clerk, and the E-Filing System Provider will not undertake independent determinations as to whether Users are receiving e-mail notifications of Documents served electronically.

Rule 2.03. User Responsibility for Security. Compliance with Rules.

Each User is responsible for the confidentiality, security, and use of his/her User Identity. If a User becomes aware that a User Identity has become compromised, the User shall immediately notify the E-Filing System Provider and request a change in username, password, or profile information as appropriate.

Rule 2.03. User Responsibility for Compliance with Rules.

Use of a User Identity shall constitute:

- (a) an agreement by the User to comply with the E-Filing Pilot Rules and that any filings made under his/her User Identity will comply with the E-Filing Rules; and
- (b) an acknowledgement that the User's e-mail address is current, working, and capable of receiving Documents served electronically.

Rule 2.04. Use of User Identity by Others.

A User may authorize another person working under his/her supervision and control to use his/her User Identity to file and serve Documents electronically, provided, however, that the User retains full responsibility for any filing made under the User Identity. Any use of the User Identity by a person under his/her supervision is deemed to have been made with the User's authorization, unless it can be shown otherwise to the Presiding Judge by clear and convincing evidence. A filing made by use of a User Identity without authorization of the User is void.

3. SIGNATURES AND AUTHENTICITY

Rule 3.01. Signatures.

Attorneys or parties may indicate on the electronically-filed Document that their signature is affixed by either typing an acknowledgement, e.g., "/s/Jane Doe," or by scanning an original document containing the attorney's or party's signature. Other documents which must contain original signatures, such as declarations or affidavits, shall be filed electronically as a scanned copy of the original, and the attorney or party shall retain the original. If an attorney or party has been granted permission to sign a Document on behalf of other attorneys or parties, the signing attorney may do so by acknowledging the capacity in which the electronic signature is made, e.g., "/s/John Roe by Jane Doe with permission." An attorney's signature on an electronically-filed Document shall be a signature for purposes of Rule 11 of

the Rules of Civil Procedure, or any other rule governing attorney's signatures as a sign of good faith.

Rule 3.02. Authenticity.

Documents filed electronically in accordance with these E-Filing Pilot Rules and accurate printouts of such documents shall be deemed authentic.

Rule 3.03. Preservation of Originals.

Where original documents exist, the User shall retain originals of such original documents until two (2) years following the final disposition, including appeals, of an Action. When necessary, any Court may order production of original documents.

4. ELECTRONIC FILING AND SERVICE

Rule 4.01. Form of Document.

All Documents must be in Portable Document Format (.pdf) and produced in a format and resolution that is legible. If a Document is unable to be converted to a .pdf file in a legible manner, or if a Document is unable to be converted to a .pdf format (audio recordings, videos, large maps, etc.), then the Document must be filed conventionally with the Clerk. Except as described in these E-Filing Pilot Rules, all Documents filed electronically shall otherwise comply with the Governing Rules describing form of documents.

Rule 4.02. Title and Description of Document.

All Documents filed electronically shall be appropriately titled and described by the User in the E-Filing System's system. Titles contain generic document types generated by the E-Filing System, and the User must select the appropriate title, e.g., Motion to Compel, Motion for Summary Judgment. Descriptions are inputted by Users into text fields, and the User must accurately describe the Document, e.g., Defendant Jane Doe's Motion for Summary Judgment on Count I of Plaintiff's Amended Complaint.

Rule 4.03. E-Filing Receipts; Effect of E-Filing; Date and Time of E-Filing.

If all of the requirements of these E-Filing Pilot Rules and of the E-Filing System are met and the Document is electronically filed, the E-Filing System shall generate an E-Filing Receipt. A filing is not completed for the purposes of these E-filing Pilot Rules until the User making the filing has received the E-Filing Receipt. The Document shall be deemed filed under the Governing Rules in the Action on the date and time noted on the E-Filing Receipt.

Rule 4.04. Complaint and Summons.

Complaints or other initiating Documents filed electronically shall be filed with the Action number blank. The E-filing System will automatically assign an appropriate Action

number upon completion of electronically filing the Complaint or other initiating Documents. Where applicable, Civil Case Information Sheets or other Case Information Sheets in Any Action shall be completed and electronically filed by the User filing the initiating Document. Any Document initiating an Action by electronic filing shall include the appropriate summons or other process for issuance by the Clerk. The Clerk, if it deems the summons acceptable and has received the applicable filing fee, shall issue the original summons as directed (e.g., returned to the User, forwarded to the Sheriff for service of process, etc.) by the User initiating the Action.

Rule 4.05. Unavailability of E-Filing System.

If a party misses a filing deadline because of an inability to electronically file Documents based upon the unavailability of the E-Filing System, the party may submit the untimely Document, accompanied by a sworn declaration stating the reason for missing the deadline no later than 12:00 pm of the first day on which Clerk is open for business following the original filing deadline. Inability to electronically file Documents caused by outages or incapacitation of the User's computer or information-technology systems not caused by the E-Filing System shall not be a basis of relief from filing deadlines.

5. SERVICE AND TIME

Rule 5.01. Effectiveness of Electronic Service.

The E-Filing System shall generate a Notice of Electronic Filing and email it to the email address of record of the filing User and any parties who have appeared in the Action who are also Users of the E-Filing System. The Notice of Electronic Filing will include the Document filed as an attachment or a link to download the Document. Upon receipt of the Notice of Electronic Filing, service is complete and effective for the purposes of these E-Filing Pilot Rules and any applicable Governing Rule against those parties who are Users of the E-Filing System.

Rule 5.02. Service to Parties who are not Users of the E-Filing System.

A User making a filing on the E-Filing System must determine if any parties in the Action are not Users and therefore not capable of receiving electronic service. If any such non-User has appeared as a party in the Action, the User making a filing must provide service to the non-User using conventional methods in the Governing Rules.

Rule 5.03. Certificates of Service.

The Notice of Electronic Filing does not constitute a valid Certificate of Service under the E-Filing Pilot Rules or the Governing Rules. Where required by the Governing Rules, a User making a filing on the E-Filing System must complete a Certificate of Service that complies with the Governing Rules and include it with any Document filed electronically, noting the manner in which each party was served.

Rule 5.04. Exceptions to Electronic Service.

Service of Process, service of Subpoenas to non-parties, and service of any other document initiating an Action may not be served electronically, but must be served according to the Governing Rules.

6. SEALED DOCUMENTS AND PRIVATE INFORMATION

Rule 6.01. Filing of Sealed Documents.

A motion to file a Document under seal may be filed electronically or in paper form and designated "Motion to Seal." A Document which is the subject of a motion to seal must be submitted to the court in paper form for in camera review. Documents submitted under seal in paper form shall be retained by the clerk under seal until a final ruling is made on the motion to seal. The court may partially grant the motion and order the submission of a redacted version to be made a part of the record. If the court authorizes the filing of a redacted version, the filer shall perform the redaction authorized by the court, and re-file the redacted version in paper form. A paper copy of any order authorizing the filing of a document under seal or the filing of a redacted Document must be attached to the Document and delivered to the Clerk. Sealed Documents and original versions of Documents later ordered filed in redacted form shall be retained in paper form under seal pending further orders of the Court.

Rule 6.02. Private Information.

Unless expressly required by law, Users shall not file any Document which is publicly available which contains unredacted any person's social security, employer taxpayer identification, drivers' license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords. Redactions, where necessary, shall ensure complete privacy of the information.

7. ORDERS, JUDGMENTS, AND OTHER MATTERS.

Rule 7.01. Entry of Orders and Judgments; Notice thereof.

The Court may file electronically all orders, decrees, judgments and other docket matters. Such filing shall constitute entry of the order, decree, judgment or other matter. Each order, judgment, or decree must bear the date and the name of the judge or clerk issuing the order. Upon the electronic entry of an order, decree, judgment or other matter, the E-filing System shall generate a Notification of Electronic Filing to all persons registered electronically to participate in the case. Transmission of the notice of entry constitutes service pursuant to the Governing Rules.

8. RECORD OF THE ACTION; ACCESS.

Rule 8.01. Record of the Action.

In E-File Cases, the official record of the Action shall be maintained electronically by the Clerk, and all Documents in the Action shall be in electronic form, except as expressly provided by these E-Filing Pilot Rules.

Rule 8.02. Access to Court Records.

Unless otherwise sealed by order of the Court or the Supreme Court of Appeals, the record of any Action shall be made available electronically by the E-Filing System Provider to subscribers meeting its terms of service.

Rules of Civil Procedure

Rule 79. Books and Records Kept by the Clerk and Entries Therein.

- (a) *Civil Docket.* - The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Supreme Court of Appeals, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made therein, all appearance, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered by the clerk shall note the word "jury" on the folio assigned to that action.
- (b) *Civil Judgments and orders.*- The clerk shall keep, in such form and manner as the Supreme Court of Appeals may prescribe, a correct copy of every final judgment or appealable order, or order affecting the title to or lien upon real or personal property, and any other order which the court may direct to be kept.
- (c) *Indices; calendars.*- Suitable indices of the civil docket and of every civil judgment and order shall be kept by the clerk under the direction of the court. There shall be prepared under the direction of the court calendars of all actions ready for trial, which shall be distinguish "jury actions from "court actions."
- (d) *Other books and record of the clerk.*- The clerk shall also keep such other books and record as may be required from time to time by the court or by the Supreme Court of Appeals.
- (e) *Recording by Digital or Other Images.*- The clerk may keep any and all records and documents, otherwise required by any provision of law to be recorded in a book as described above, in a microphotographic, digital, or other format which employs a process for image-storing of documents in a reduced size. The format must conform to the applicable policy approved by the Supreme Court Administrative Director.

Rules of Criminal Procedure

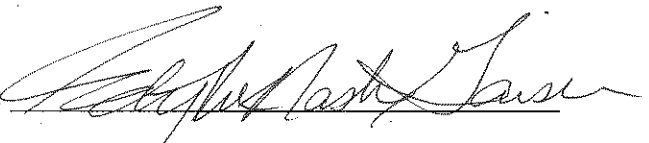
Rule 55. Records

(a) The clerk of the circuit court and the clerk of the magistrate court shall keep records in criminal proceedings in such form as the Supreme Court of Appeals may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made.

(b) Recording by Digital or Other Image. -- The clerk may keep any and all records and documents, otherwise required by any provision of law to be recorded in a book as described above, in a microphotographic, digital, or other format which employs a process for image-storing of documents in a reduced size. The format must conform to the applicable policy approved by the Supreme Court Administrative Director.

A True Copy

Attest:



Edythe Nash Gaiser, Deputy Clerk of Court